

June 27, 1986  
may be subject to  
provision of  
Act  
under the  
Act

Mr. John M. Sipple, Jr.  
Premerger Notification Office  
Federal Trade Commission  
Washington, D.C. 20580

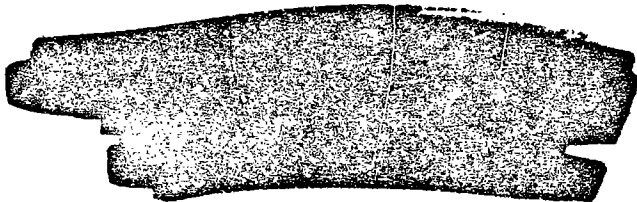
Dear John:

Thanks for taking the time to talk with me last Wednesday about the Hart-Scott-Rodino Notification and Report Form. As promised, I am writing to describe the source of my confusion in greater detail.

The transaction involved is a very simple one. Corporation "A" will acquire all the common stock of Corporation "B." As consideration for this purchase, the shareholders of Corporation "B" will receive cash and convertible debentures of Corporation "A." With respect to reporting this transaction, I confronted what seemed to me to be four separate issues:

1. Which "transactions" are reportable?
2. Who are the acquiring and acquired persons, as defined in § 801.2 of the Rules?
3. Which of these acquiring and acquired persons are required to file a Notification and Report Form?
4. What information must be included with respect to acquiring and acquired persons not required to file notification?

As to Corporation "A's" acquisition of common stock, Corporation "A" is obviously an acquiring person and Corporation "B" is obviously an acquired person. As to the acquisition of convertible debentures by the shareholders of Corporation "B," § 801.2(e) of the Rules makes clear that, when voting securities are to be acquired from an acquiring person, this transfer of consideration is analyzed separately and may itself constitute a reportable acquisition. Since the definition of "person" includes natural persons, and since the definition of "voting securities" includes securities which "upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer," the shareholders of Corporation "B" seem to fall within the definition of an acquiring person as set forth in § 801.2(a) of the Rules. Likewise, Corporation "A" seems to fall within the definition of an acquired person, as set forth in § 801.2(b) of the Rules.



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Assuming the commerce, size-of-person, and size-of-transaction tests are satisfied and the transaction is not subject to one of the exemptions set forth in the Act or Rules, both Corporations "A" and "B" will have to file a Notification and Report Form — Corporation "A" as an acquiring firm and Corporation "B" as an acquired firm. Section 802.31 of the Rules makes it clear that the acquisition of convertible debentures need not be reported. Thus, Corporation "A" need not report as an acquired person, nor need the shareholders of Corporation "B" report as acquiring persons.

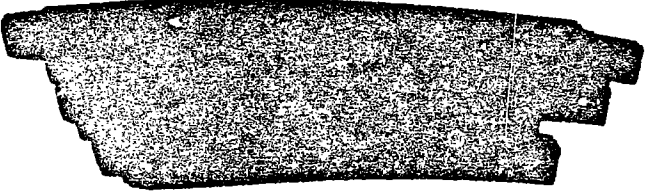
My confusion stemmed from the instructions for the Notification and Report Form. The instructions for Item No. 2(a) state:

Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification and a description of the assets or voting securities to be acquired by and/or the consideration to be received by each party. (Emphasis added.)

Since, as discussed above, I concluded that Corporation "A" was an "acquired person" and the shareholders of Corporation "B" were "acquiring persons" even though neither was required to report as such, the instruction led me to believe that I should include Corporation "A" as an acquired person and the shareholders of Corporation "B" as acquiring persons in Item 2(a). This would have required additional information regarding the acquisition of the convertible debentures under Item 2(e) of the form.

As I mentioned to you on the phone, it seemed intuitively obvious to me that the FTC and DOJ would not be interested in receiving the names and addresses of each of the shareholders of Corporation "B" and additional information concerning the convertible debentures to be acquired by each of these shareholders. My intuition was reinforced by Example 2 following § 801.2 of the Rules (as amended in 1983). I felt uncomfortable relying solely on my intuition and Example 2, however, because I did not want to take any risk of making a deficient filing. Thus, after spending what I'm sure was an excessive amount of time worrying about this problem, I decided to ask for help. It was in this connection that I talked first with Mr. Williams, and later with you.

I hope I haven't overwhelmed you with a lot of detail about a little and insignificant problem. Since it did cause me to spend a lot of time and effort to try to puzzle it out, however, I thought it would be worth pointing out the problem to you. I still have this nagging feeling that I simply overlooked some pertinent provision of the Rules which would have clarified this issue for me. If this is indeed what happened, I would appreciate someone letting me know.



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Thanks again, John, for listening to my tale of woe. I hope this information is helpful.

Sincerely yours,

